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CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

BY KW  
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

DAN SERGIO DE LA CRUZ,  
Plaintiff,

v.

THE BANK OF NEW YORK AS  
TRUSTEE FOR THE  
CERTIFICATEHOLDERS CWABS, INC.  
ASSET-BACKED CERTIFICATES,  
SERIES 2005-9 and DITECH  
FINANCIAL, LLC,  
Defendant

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CIVIL ACTION NO. 1:17-cv-00163

INTERLOCUTORY ORDER

Before the Court is Plaintiff's Motion for Relief from Final Judgment [Doc. 114] (the "Motion"), Defendant's Response [Doc. 115] as well as Plaintiff's Reply [Doc. 116]. Upon review of the Motion, Response and Reply on file, and hearing the arguments of counsel, the Court is of the opinion that upon Plaintiff's deposit of certain funds into the registry of the court, the real property with the following legal description:

LOT 3, BLOCK "A" STEINER RANCH PHASE ONE, SECTION 9, A  
SUBDIVISION IN TRAVIS COUNTY, TEXAS, ACCORDING TO THE  
MAP OR PLAT OF RECORD IN DOCUMENT NUMBER 200200113  
OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY,  
TEXAS.

and commonly known as 12713 Bright Sky Overlook, Austin Texas 78732 property, (the "Property") shall be released from the effect of the Final Judgment [Doc. 98] previously entered in this case so that the sale of the Property can occur on or about June 11, 2021.

ACCORDINGLY, IT IS ORDERED:

1. Upon the sale of the Property on or about June 11, 2021, the sum of \$550,278.00 out of the proceeds of sale shall be wired by Key Title (or such other title company retained in regard to the sale of the Property) into the registry of the Court (the "Deposited Funds") on behalf of Plaintiff.
2. That the Clerk, United States District Court, shall receive from Key Title on behalf of Plaintiff a wire deposit from American Bank of Commerce account number ending in 1497 and deposit into the Court's registry a wire in the exact amount of \$550,278.00, on behalf of Plaintiff (the "Deposited Funds").

3. Upon receipt of the Deposited Funds into the registry of the Court, Defendant shall: (a) execute a release of its deed of trust lien recorded of record as Document No. 2005134061, in the Official Public Records of Travis County, Texas (the "Deed of Trust Release"); and, (b) execute a partial release of judgment reflecting the release of Defendant's equitable lien in the Property awarded Defendant within the Final Judgment, without Defendant releasing the Final Judgment in its entirety.
4. Upon deposit of the Deposited Funds into the registry of the court, Defendant shall have the same rights to recover the amount owed according to the Final Judgment from the Deposited Funds as it would have had to recover the funds from the Property, with the funds being imputed with all the characteristics, benefits and rights that Defendant currently possesses in the Property.
5. Defendant will look solely to the Deposited Funds to satisfy the amount owed under the Final Judgment save and except in the event it is judicially determined that the amount owed in full satisfaction of the Final Judgment exceeds the Deposited Funds (the "Excess Amount"). In such event Defendant shall be entitled to the Deposited Funds with the Excess Amount to be collected under the Final Judgment against Plaintiff individually (without encumbering or burdening the Property).
6. Upon execution of the releases provided for in paragraph 3 above, \$353,057.16 of the Deposited Funds shall be immediately available for withdrawal by Defendant from the Court's registry and Plaintiff shall have no right of objection over the distribution of the same.
7. That the Clerk, United States District Court, as soon as the business of the office allows, shall deposit the remaining funds into the DISPUTED OWNERSHIP FUND of the Court Registry Investment System (CRIS) where they shall remain until further order of the Court save and except the amount above in paragraph 6 to be immediately released to Defendant.
8. [The competing proposed provisions that occupied this Section 8 will be considered by the Court at a later time]

IT IS SO ORDERED on this 9th day of June 2021.

  
HON. LEE YEAKEL  
UNITED STATES DISTRICT JUDGE